

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

VICTORIA KLEIN and
ASHLEY SWADLEY,

Plaintiffs,

VS.

O'NEAL, INC., d/b/a O'NEAL, JONES &
FELDMAN PHARMACEUTICALS,
ET AL.,

Defendants.

CA 7-03-CV-102-D

**CLASS PLAINTIFFS' UNOPPOSED MOTION TO APPROVE DISBURSEMENT OF
ATTORNEY'S FEE TO GRAYDON HEAD & RITCHEY, LLP**

TO: THE HONORABLE SIDNEY A. FITZWATER,
CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS:

COME NOW, class plaintiffs and file this their unopposed motion to approve disbursement of attorney's fee to Graydon Head & Ritchey, LLP, attorneys for E-Ferol class member Lawrence Long, and in support of this motion, would show the court as follows:

1.

Following the approval of the settlement of this class action, *see Klein v. O'Neal, Inc.*, 705 F. Supp.2d 632, 672 (N.D. Tex. 2010)(Fitzwater, C.J.) and entry of judgment on June 18, 2010 (doc. no. 453), class member Lawrence Long filed a notice of appeal to the Fifth Circuit of Appeals. On October 14, 2010, class plaintiffs entered into a settlement agreement with Lawrence Long in which Mr. Long withdrew his notice of appeal and allowed the settlement agreement to become final. Following notice to the class, the court approved this settlement (doc. no. 475). As part of the settlement with class member Long, defendants paid two hundred eighty thousand dollars (\$280,000.00) and class counsel paid three hundred and sixty dollars

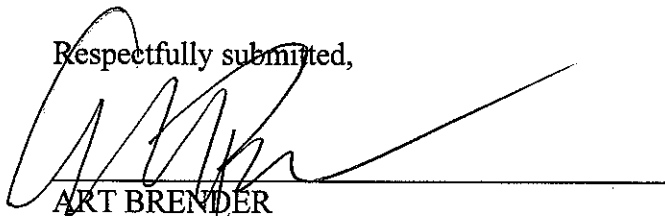
(\$360,000.00) of the six hundred and forty thousand dollars (\$640,000.00) in attorney's fees to attorney John B. Pinney and his law firm, Graydon Head & Ritchey, LLP, for the legal services provided to Mr. Long. The defendants paid their portion of the attorney's fees, in addition to funding the class action settlement on January 19 and 20, 2011. On March 3, 2011, the court issued an order approving the disbursement of attorney's fees to class counsel (doc. no. 495). The court's order required that the escrow agent, Encore Trust, retain from the disbursement to class counsel, the three hundred and sixty thousand dollars (\$360,000.00) fee to be paid to Long's attorneys by class counsel. Thus, the sum of six hundred and forty thousand dollars (\$640,000.00) is currently being held by the escrow agent, Encore Trust, subject to an order of this court to distribute said funds to Graydon Head & Ritchey, LLP.

2.

Class counsel would show the court that after consultation with defense counsel, Mr. Long has dismissed all litigation he brought concerning E-Ferol and has fully complied with the requirements of the Settlement Agreement and Release entered into by the class, the defendants, and Mr. Long on October 14, 2010. Thus, class plaintiffs move the court to order the escrow agent, Encore Trust, to disburse the sum of six hundred and forty thousand dollars (\$640,000.00) from the E-Ferol qualified settlement fund to Graydon Head & Ritchey, LLP, pursuant to the written instruction of lead class counsel as to the form of the disbursement.

WHEREFORE, PREMISES CONSIDERED, class plaintiffs pray that the court grant this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Art Brender', is written over a horizontal line.

ART BENDER
State Bar No. 02954500

LAW OFFICES OF ART BRENDER
600 Eighth Avenue
Fort Worth, Texas 76104
(817) 334-0171, telephone
(817) 334-0274, telecopier

LEAD CLASS COUNSEL

DWAIN DENT
State Bar No. 05760550

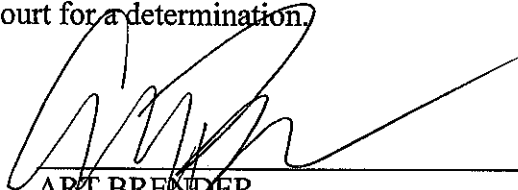
FRED L. STRECK, III
State Bar No. 19374350

THE DENT LAW FIRM
1120 Penn Street
Fort Worth, Texas 76102
(817) 332-2889, telephone
(817) 332-5809, telephone

CLASS COUNSEL

CERTIFICATE OF CONFERENCE

A conference was held on the 11th day of July, 2011, with Barry Chasnoff, attorney for defendants, on the merits of this motion. Counsel advised that an agreement could be reached, therefore, this motion is presented to the court for a determination.


ART BRENDER

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July, 2011, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means and pursuant to the Federal Rules of Civil Procedure:

Barry A. Chasnoff
Akin Gump Strauss Hauer & Feld, LLP
300 Convent St., Suite 1500
San Antonio, Texas 78205

David Taylor
Thompson Coe
Plaza of the Americas
700 N. Pearl Street, 25th Fl.
Dallas, Texas 75201-2832

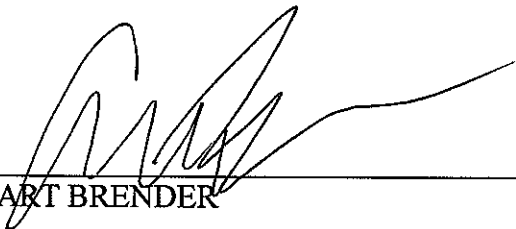
ATTORNEYS FOR DEFENDANTS

Cheryl Washington
130 West Second St., Suite 350
Dayton, Ohio 45402

ATTORNEY FOR CLASS MEMBER LAWRENCE V. LONG, JR.

John B. Pinney
GRAYDON HEAD
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202

ATTORNEY FOR CLASS MEMBER LAWRENCE V. LONG, JR.


ART BRENDER